

48A C.J.S. Judges § 66

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

E. Termination of Term

2. Termination by Age Limit or Retirement

§ 66. Disability retirement

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Pursuant to some statutory provisions, a judge may retire or be retired by reason of disability.

Pursuant to some statutory provisions, a procedure is provided whereby a judge who is physically or mentally disabled can voluntarily retire.¹ A judge who voluntarily retires because of a total disability to carry on the duties of his or her office does not, in some jurisdictions, come within statutory provisions mandating that retired judges constitute emergency judges of a court.² Pursuant to statutory provision in other jurisdictions, however, a judge who has retired because of permanent disability continues to be available for assignment by designation to perform judicial duties.³

In some jurisdictions, a judge may, pursuant to applicable statutory provision, be involuntarily retired by reason of a mental or physical disability that seriously interferes with the performance of the judge's duties and is, or is likely to become, permanent.⁴ A determination of involuntary retirement is generally made by a designated court⁵ upon the recommendation of a commission.⁶

Grounds for the mandatory retirement of a judge do not require proof of criminal misconduct, and, therefore, a proceeding to mandatorily retire a judge is not a criminal proceeding in which ordinary criminal procedural safeguards apply.⁷ In a mandatory retirement proceeding, in order to sustain a finding that the judge is suffering from a disability which renders him or her unable to perform his or her judicial duties and that the disability is, or is likely to become, permanent, the evidence must be sufficiently clear and convincing to a reasonable certainty.⁸

Footnotes

1 Cal.—[Davis v. Commission On Judicial Qualifications](#), 73 Cal. App. 3d 818, 141 Cal. Rptr. 75 (2d Dist. 1977).

Permanent disability of federal judge

U.S.—[Boomhower, Inc. v. American Auto. Ins. Co.](#), 220 F.2d 488 (D.C. Cir. 1955).

2 N.C.—[Alpine Motors Corp. v. Hagwood](#), 233 N.C. 57, 62 S.E.2d 518 (1950).

As to statutes designating retired judges to perform judicial duties, see § 65.

3 Cal.—[People v. Cahan](#), 141 Cal. App. 2d 891, 297 P.2d 715 (2d Dist. 1956).

4 Okla.—[Lavender v. Woodliff](#), 1979 OK JUD 1, 605 P.2d 1338 (Okla. Jud. Ct. 1979).

Retired judge not judge of any court

Mo.—[State on Information of Dalton v. Russell](#), 365 Mo. 280, 281 S.W.2d 781 (1955).

5 Okla.—[Lavender v. Woodliff](#), 1979 OK JUD 1, 605 P.2d 1338 (Okla. Jud. Ct. 1979).

Procedure constitutional alternative to impeachment process

Cal.—[McComb v. Commission On Judicial Performance](#), 138 Cal. Rptr. 459, 564 P.2d 1 (Cal. 1977).

6 S.C.—[Matter of Williamson](#), 270 S.C. 313, 242 S.E.2d 221 (1978).

Fla.—[In re Kerr](#), 521 So. 2d 1092 (Fla. 1988).

Proceeding analogous to state bar disciplinary proceeding

Cal.—[McComb v. Commission On Judicial Performance](#), 138 Cal. Rptr. 459, 564 P.2d 1 (Cal. 1977).

8 Cal.—[McComb v. Commission On Judicial Performance](#), 138 Cal. Rptr. 459, 564 P.2d 1 (Cal. 1977).

As to the necessity for clear and convincing evidence in a civil action, see C.J.S., Evidence §§ 1624, 1625.

Medical and psychiatric testimony

S.C.—[Matter of Williamson](#), 270 S.C. 313, 242 S.E.2d 221 (1978).